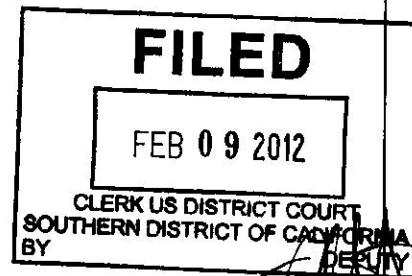


Michael David Wilson
Mountain Home Conservation Camp
P.O. Box 647
Springville, CA 93265
CDCR: F-22446



In pro se

NUNC PRO TUNC

FEB 06 2012

THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA

MICHAEL DAVID WILSON,

Plaintiff,

vs.

FRANK X. CHAVEZ, Warden,

Respondent,

3:11-cv-00599-IEG-BLM

**PETITIONER'S OBJECTIONS
TO THE MAGISTRATE'S REPORT
& RECOMMENDATION**

Hon. Barbara L. Major

Petitioner Michael David Wilson will, and hereby does, object to the Honorable Barbara L. Major's Report and Recommendations in the above-entitled action. Petitioner objects pursuant to 28 U.S.C. § 636, et seq. on the grounds that: (1) the Magistrate erred in concluding that Tollet v. Henderson (1973) 411 U.S. 258 precludes habeas corpus relief based upon plaintiff's plea of guilty; (2) the magistrate erred by finding that it could not hold an evidentiary hearing; (3) the magistrate erred by finding that counsel's assistance was effective; and (4) the Magistrate erred by determining that habeas relief was barred by the AEDPA. Indeed, the United States Supreme has found in various cases that an accused is entitled under the Sixth Amendment to have the assistance of counsel during the plea bargaining process to ensure that the outcome of that


1 process, whether it be the accused's acceptance or rejection of the prosecution's plea offer, is
2 reliable and fundamentally fair. This is because a criminal defendant is entitled to effective
3 assistance of counsel during all critical stages of a criminal prosecution, including plea
4 negotiations. See, e.g., Padilla v. Kentucky (2010) 554 U.S. ___, [130 S.Ct. 1473, 1480-81].

5 Here, the record adequately shows that petitioner was deprived of such assistance and
6 that he was prejudiced as a result thereof. The underlying record and legal landscape both show
7 that petitioner was entitled to relief and that his claim was not barred by the Supreme Court's
8 decision in Tollet v. Henderson (1973) 411 U.S. 258.

9 There are several exceptions to the rule announced in Tollet. One of which is when the
10 advice of counsel to plead guilty was deficient. See Tollet at p 258 [explaining that because a
11 guilty plea precludes a claim of constitutional violations prior to the plea, petitioner's sole avenue
12 for relief is demonstrating that advice of counsel was deficient]; see also Lambert v. Blodgett (9th
13 Cir. 2004) 393 F.3d 943, 979 [same]. Thus, contrary to the magistrate's findings, petitioner
14 Wilson's claims are cognizable on habeas corpus and he is entitled to relief pursuant to 28 U.S.C.
15 § 2254(d)(1) & (2). An evidentiary hearing, which is not barred in this case, should be held.

16 Dated:

17 Your petitioner,

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21 Michael David Wilson
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PROOF OF SERVICE BY MAIL
[C.C.P. § 1013 (a) § 2015.5]

I, Michael Wilson, hereby declare:

1. I am a citizen owing loyalty to and entitled to the protections of the United States of America. I am over the age of eighteen (18) and [not] a party to this action. I am a resident of the County of Tuolumne, CDCR # F22446. My address is

SIERRA CONSERVATION CENTER
5150 O'BYRNES FERRY ROAD
JAMESTOWN, CA 95327

2. On 2-2-2012, I served via United States Mail a copy of the following document(s): Petitioner's Objections to the Magistrate's Report & Recommendation
3. The above-noted legal document(s) were placed in an envelope and given to correctional staff with directions to mail it to the following address(es):¹

 G. B. LaSalle 2/2/12

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

This document was executed on the 2 day of 2-2012 for the year 2012 at Jamestown, California.

Name Michael Wilson

Signature



¹ Please take notice that pursuant to *Houston v. Lack* (1988) 487 U.S. 266 [108 S.Ct. 2379; 101 L.Ed.2d 245] and *Silverbrand v. County of Los Angeles* (2009) 46 Cal.4th 106 [92 Cal.Rptr.3d 595] the above legal documents are to be deemed filed on the date they were handed to correctional staff for mailing to the courts. ("Prison Mailbox Rule.")

Michael Wilson F224446

MOUNTAIN HOME - 00 #10

STATE PRISON

P.O. BOX 847

SPRINGVILLE, CA 93265



SAN DIEGO, CA 92101
FRI FEB 24 2012 PM

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Southern District of California
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